

DIANA ZARR  
v.  
ACTING SACRAMENTO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 90-23-A

Decided May 11, 1990

Appeal from a denial of an application for adult vocational training.

Affirmed.

1. Indians: Education and Training: Vocational Training--Indians:  
Financial Matters: Financial Assistance

Under the Bureau of Indian Affairs' adult vocational training program, 25 CFR Part 27, institutional training must be attended on a full-time basis.

2. Indians: Education and Training: Vocational Training--Indians:  
Financial Matters: Financial Assistance

Where funds available under the Bureau of Indian Affairs' adult vocational training program are limited, it is a reasonable exercise of discretion for the Bureau to deny funding to an applicant who would simultaneously receive financial assistance under the Bureau's higher education program.

APPEARANCES: David J. Rapport, Esq., Ukiah, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Diana Zarr seeks review of an October 19, 1989, decision of the Acting Sacramento Area Director, Bureau of Indian Affairs (Area Director; BIA), denying her application under the adult vocational training (AVT) program. For the reasons discussed below, the Board affirms the Area Director's decision.

Background

Appellant is an enrolled member of the Sherwood Valley Rancheria. In 1980, she applied for a higher education grant under 25 CFR Part 40. Her application was denied because she did not meet the eligibility criterion in 25 CFR 40.1, which requires that an applicant possess an Indian blood quantum of one-quarter degree or more. She challenged the blood quantum requirement and was ultimately successful when, in 1986, the United States court of Appeals for the Ninth Circuit struck down the requirement. Zarr v. Barlow, 800 F.2d 1484 (9th Cir. 1986).

Appellant attended Sonoma State University while the litigation was pending. Following the Court of Appeals' decision, appellant's attorney and BIA entered into discussions concerning payments from BIA higher education grant funds to cover educational expenses appellant had incurred while enrolled at the university. By letter of December 8, 1988, to the Deputy to the Assistant Secretary - Indian Affairs/Director (Indian Education Programs), appellant's attorney requested that funds from the AVT program be included in the amount to be provided to appellant. These funds were requested to cover an electrology course appellant had taken in 1985 and 1986 at the American College of Electrology, Concord, California, while she was also attending the university. The request stated at page 2:

[Appellant] \* \* \* did not apply for tuition payments and other costs associated with her training under the BIA [AVT] program, believing that it would have been futile, just as her experience had been under the BIA Higher Education Grant Program. Understandably, she assumed that if she did not qualify as an Indian under one BIA educational program, there was no chance that she would qualify under another. Ironically, it appears that she would have qualified because the definition of "Indian" under 25 C.F.R. Part 27, unlike the definition under 25 C.F.R. Part 40, does not impose any Indian blood quantum requirement on members of federally recognized Indian tribes.

Appellant initially sought reimbursement of tuition costs for the electrology course in the amount of \$2,500. She was informed that she would have to submit an application under the AVT program, based on her circumstances in 1985. She then applied to the Central California Agency, BIA, under the AVT program, for reimbursement in the amount of \$4,023.33, an amount which included funds for equipment in addition to tuition costs.

The Superintendent, noting that the agency had many more applicants than it had available funds, denied appellant's application on several grounds: (1) the electrology course was short-term (500-600 hours) and not comprehensive enough to provide appellant with employable skills; (2) the occupation of electrologist was not listed in the California Occupational Index Guide; (3) funding for private schools was not normally approved unless the training sought is unavailable at community colleges and, in this case, there were private cosmetology schools affiliated with community colleges in California; (4) appellant did not attend the training on a full-time basis; and (5) appellant did not meet the requirement of 25 CFR 27.5(f) 1/ because she intended to pursue immediate further education rather than seek employment.

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1/ 25 CFR 27.5(f) provides:

"Only those applicants who willingly declare intent to accept full time employment as soon as possible after completion of training shall be selected. Plans may subsequently change, but the intent of the training program is preparation for employment, and this must be the initial intent of program participants. The program is not meant to serve as a preliminary to immediate further education."

Appellant appealed the denial to the Area Director, who affirmed it on October 19, 1989. The Area Director held that appellant failed to meet the requirements of 25 CFR 27.5(c) 2/ and (f) because of her full-time attendance at Sonoma State University. He also held that appellant's electrology course was not a full-time program. Further, he stated, because of the limited funds available, applicants were not considered eligible to receive AVT funds and higher education funds simultaneously.

Appellant's appeal from this decision was received by the Board on November 6, 1989. Only appellant filed a brief.

### Discussion and Conclusions

Appellant argues that she meets the requirements of 25 CFR 27.5(c) and (f); she has adequately demonstrated that training in electrology leads to employment as required by 25 CFR 27.7(a)(3); the Area Director improperly relied on the BIA Manual in finding that her electrology course was not a full-time program; and the Area Director improperly relied on the limitation in AVT funds to deny appellant's application.

Both the Superintendent and the Area Director found that appellant's electrology course was not a full-time program. The Superintendent's July 10, 1989, letter stated at page 2:

A minimum of thirty hours per week is required for institutional training involving predominantly shop practice. [Appellant] enrolled in a 500 hour course on June 18, 1985. She completed on August 1, 1986. Full-time training at a minimum of thirty hours per week would set a reasonable completion at seventeen weeks or October 1985. It took her almost fourteen months to complete the course.

[1] The requirement that institutional training under the AVT program be attended on a full-time basis is found in 25 CFR 27.2. See Colbert v. Muskogee Area Director, 18 IBIA 92, 95 (1990). "Full-time institutional training" is defined at 25 CFR 27.1(h) as:

(1) An institutional trade or technical course offered on a clock-hour basis below the college level, involving shop practices as an integral part thereof when a minimum of thirty (30) hours per week of attendance is required with not more than 2 1/2 hours of rest periods per week allowed.

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2/ 25 CFR 27.5(c) provides:

"An applicant must be in need of training in order to obtain reasonable and satisfactory employment or is underemployed and without additional training would result in extreme hardship for the applicant, and is in need of financial assistance in order to obtain such training. It must also be feasible for the applicant to pursue training."

(2) An institutional vocational course offered on a clock-hour basis below the college level in which theoretical or classroom instruction predominates when a minimum of twenty-five (25) hours per week net of instruction is required, or

(3) An institutional undergraduate vocational course offered by a college or university on a quarter or semester-hour basis when a minimum of twelve (12) semester credit hours or its equivalent is required.

Appellant concedes that she attended her electrology course during summer and semester breaks while she was in full-time attendance at Sonoma State University. However, she states that, while in attendance at her electrology course, she attended full-time, *i.e.*, over 30 hours a week. She argues that the regulations do not require that an applicant attend full-time training continuously until completion.

While it is true that the regulations do not specifically require that full-time training be continuous, the Board finds that the Area Director reasonably concluded that appellant's intermittent attendance at her electrology course, during breaks from her full-time university attendance, fell outside the scope of "full-time institutional training" within the meaning of 25 CFR Part 27. Whatever interruptions in continuity might be considered reasonable in a full-time program, <sup>3/</sup> appellant's attendance during short, scattered sessions simply stretches the concept of "full-time" too far. Further, the fact that appellant was in full-time attendance at the university would seem sufficient, in itself, to preclude her from qualifying simultaneously as a full-time vocational student.

The Board also finds that the Area Director reasonably concluded that appellant failed to meet the requirements of 25 CFR 27.5(c) and (f) because of her simultaneous attendance at the university. Her university education was reasonably seen as preparing her for employment so that she was not "in need of training" under the AVT program within the meaning of subsection 27.5(c). Further, it was apparent that appellant intended to continue her university education rather than seek employment "as soon as possible," as contemplated by subsection 27.5(f).

[2] The Area Director also stated that, because of the limited funds available at the Central California Agency for the AVT program, applicants were not simultaneously funded under the higher education and AVT programs. In Colbert, 18 IBIA at 95, the Board recognized the limited availability of funds for the AVT program and analogized the situation to that in other BIA grant programs where BIA must allocate funds which are less than the amount

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<sup>3/</sup> The Area Director's decision cited the provision of the BIA Manual, 82 BIAM 5.2.8.11A(1)(c), which provides for approval of "interruption status" in full-time training. Appellant objects to the Area Director's reliance on the Manual. The Board finds it unnecessary to rely on the Manual to conclude that appellant's electrology course did not meet the requirement for full-time training contained in the regulations.

sought by the program applicants. The Board stated that it would uphold allocation determinations which were reasonable and objective. In this case, the Board finds that it was reasonable for BIA, in seeking to make education/training funds available to the greatest number of applicants, to deny simultaneous funding under the AVT and higher education programs to the same applicant.

Appellant argues that, in her case, limited funds should not be used as a reason for denying her application. She contends that her failure to apply for AVT funds in 1985, prior to attending the electrology course, was reasonable; that it is now impossible to determine what would have happened had she submitted her application in a timely manner; and that therefore her application should be construed generously and any doubts resolved in her favor.

The Board rejects this argument. Although appellant contends that it was reasonable for her to assume she would have found the same one-quarter degree blood quantum requirement in 25 CFR Part 27 as appeared in 25 CFR Part 40, the Board cannot agree that she acted reasonably in failing either to inquire about the eligibility requirements for the AVT program or consult the relevant regulations.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Sacramento Area Director's October 19, 1989, decision is affirmed.

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Anita Vogt  
Administrative Judge

I concur:

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Kathryn A. Lynn  
Chief Administrative Judge